(18,169)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 100.

EDWARD D. PAGE (BANKRUPT), APPELLANT,

vs.

CHARLES W. EDMUNDS, TRUSTEE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 8, 1902.

1 Be it remembered that on the twenty-eighth day of June in the year of our Lord one thousand nine hundred, George W. Jacobs, Junior, Esquire, attorney for petitioner appeared in court and filed a transcript of record pursuant to an appeal in the case wherein Edward D. Page, bankrupt is appellant, and, Charles Welsh Edmunds, trustee is appellee, which being read is in the words following, to wit:

2 United States Circuit Court of Appeals, in the Third Circuit.

In the Matter of EDWARD D. PAGE, Bankrupt.

To the honorable the judges of the United States circuit court of appeals, in the third judicial circuit:

The petition of Edward D. Page, of the city of Philadelphia, in the eastern district of the State of Pennsylvania, respectfully rep-sents:

That on the 16th day of November, A. D. 1899, he was declared voluntary bankrupt in the district court of the said district, and the matter was referred to Alfred Driver, Esq., referee in bankruptcy.

That he is a member of the Philadelphia stock exchange, an unincorporated voluntary society, having been a member thereof since 1880, and in good standing. In filing his debtor's petition in said proceedings, he did not include this membership as an asset of his estate in the schedules attached thereto. His trustee in bankruptcy however, caused the membership to be appraised as such asset, and petitioned the referee in the cause for an order of sale of the same for the benefit of the creditors of his estate, and the referee ordered that the trustee sell at public auction the seat of membership of Edward D. Page, the bankrupt, and all his right and interest therein, subject to the constitution and by-laws of the Philadelphia stock exchange regulating membership therein. Whereupon the bankrupt petitioned for a review by the judge of the district court in the said district, on the ground that the referee erred in ordering such sale, in that the bankrupt's membership in this exchange was not property or assets for the payment of debts, under the laws of the State of Pennsylvania, his domicile, as established by numerous decisions of its supreme court, and, therefore, properly was not included by bankrupt in the schedules attached to his debtor's petition as part of his assets.

The district court, upon review, approved the order made by the referee, and directed the trustee to sell this membership as property of the bankrupt's estate, in accordance with the referee's order.

A copy of the referee's order of sale and summary of facts comprising his report to the court on the above question, is hereto attached and marked "Exhibit A."

A copy of the opinion of the court, rendered upon review, is also attached hereto, and marked "Exhibit B."

Your petitioner avers that the learned judge of the district court erred in his decision holding bankrupt's membership in the Philadelphia stock exchange to be property within the intent and
3 meaning of the bankruptcy act of 1898, which should pass to his trustee as an asset of his estate for the benefit of his creditors.

Your petitioner avers that he is aggrieved thereby, and therefore prays your honorable court to review and revise the above question of law embodied in the decision of the learned judge of the district court.

And he will ever pray, etc.

EDWARD D. PAGE, *Petitioner.*

STATE OF PENNSYLVANIA, } ss:
County of Philadelphia, }

Edward D. Page, being duly sworn according to law, deposes and says that he is the petitioner above named, and that the facts set forth in the foregoing petition are true.

EDWARD D. PAGE.

Sworn and subscribed before me this 26th day of June, A. D. 1900.

GRACE B. HURLBUT,
Notary Public.

"EXHIBIT A."

District Court United States, Eastern District of Pennsylvania. In Bankruptcy.

In the Matter of EDWARD D. PAGE, Bankrupt. No. 348. Voluntary.

To the Honorable John B. McPherson, district judge:

I, Alfred Driver, one of the referees of said court in bankruptcy, do hereby certify that in the course of the proceedings in said cause before me the following question arose pertinent to the said proceedings: The trustee presented his petition praying for an order of sale of the seat or membership of the bankrupt in the Philadelphia stock exchange, and after hearing the same and argument thereof by the trustee and by the counsel for the bankrupt, the referee filed his report containing a summary of the evidence and the finding and order of the referee thereon, and ordered that the trustee sell at public auction the seat or membership of the bankrupt and all his right
4 and interest therein, subject to the constitution and by-laws of the Philadelphia stock exchange regulating membership therein, which report of the referee is hereto annexed. Afterwards, on April 4, 1900, the bankrupt presented his petition to the referee desiring a review of said order by the judge, and averring that the referee erred in making the order for the reason that membership in the Philadelphia stock exchange is not property within the meaning of the bankruptcy act, nor is it an asset of the bankrupt's estate which can be sold by the trustee.

And the question whether or not the said seat or membership in

the Philadelphia stock exchange is property which passes to the trustee and which can be sold by the trustee as an asset of the estate of the bankrupt is certified to the judge for his opinion thereon.

Dated at Philadelphia, the 14th day of May, A. D. 1900.

ALFRED DRIVER,
Referee in Bankruptcy.

District Court of the United States, Eastern District of Pennsylvania. In Bankruptcy.

In the Matter of EDWARD D. PAGE, Bankrupt. No. 348.

To Alfred Driver, referee in bankruptcy in said district:

The petition of Edward D. Page, of the city and county of Philadelphia, in the eastern district of Pennsylvania, bankrupt, respectfully represents:

That he desires a review by the judge of the district court of the eastern district of Pennsylvania of the order of referee in the above matter, directing the trustee to sell at public auction the seat or membership of Edward D. Page, the bankrupt, and all his right and interest therein, subject to the constitution and by-laws of the Philadelphia stock exchange, regulating membership therein.

And your petitioner avers that the referee erred in making the above order, in that your petitioner is advised and believes that his membership in Philadelphia stock exchange is not property within meaning of bankrupt act of July 1, 1898, nor is it an asset of his estate which can be sold by his trustee in bankruptcy.

EDWARD D. PAGE, *Petitioner.*

5 UNITED STATES, }
Eastern District of Pennsylvania, } *ss:*

I, Edward D. Page, the petitioner bankrupt, do hereby make solemn oath that the statements contained in the above petition are true to the best of my knowledge, information and belief.

EDWARD D. PAGE, *Petitioner.*

Subscribed and sworn before me this 4th day of April, A. D. 1900.

ALFRED DRIVER,
Referee in Bankruptcy.

District Court United States, Eastern District of Pennsylvania. In Bankruptcy.

In the Matter of EDWARD D. PAGE, Bankrupt. No. 348.

The petition of the trustee has been filed praying for an order of sale of the seat or membership of the bankrupt in the Philadelphia stock exchange. This petition was heard before the referee and argued by the trustee, and by the counsel for the bankrupt.

The facts are these: The said Page was adjudicated a bankrupt

upon his own petition on November 16, 1899. Upon his examination he stated that he is a member of the Philadelphia stock exchange; that he bought his seat in 1880, paying for it at that time about $5,500; that when a member wishes to dispose of his seat he hunts up somebody who wants to buy and sells it to him; that seats are always salable; that the last price paid of which he heard was $8,500; that he could sell his seat at any time to any one who wanted to buy it; that the buyer takes it with the understanding that he will be elected a member; otherwise it is no sale; that he could sell his seat without the approval and concurrence of the other members; that he did not include the seat as an asset in his schedules because from his understanding of the matter he did not consider it an asset; that in the event of his death there would be paid to his wife $5,000 out of the gratuity fund, and that she would get said sum and the seat; that if he should sell the seat the gratuity or insurance would go with the seat.

The trustee upon this evidence of the bankrupt caused the seat in the stock exchange to be appraised, and the appraisers have reported its value to be $8,000.

6 The secretary of the stock exchange testified that the bankrupt had no unsettled contracts with or claims against him by any member of the exchange. The Philadelphia stock exchange is an unincorporated association. The constitution and by-laws were offered in evidence. The articles of the constitution which relate to membership and the transfer of membership are as follows:

Article 5.

SEC. 4. A committee on admissions, consisting of five members, to which all applications for membership, transfer of membership and readmissions of suspended members shall be referred. It shall be its duty to inquire into the general standing of the applicant, and make a report thereon to the governing committee within one month of the presentation of the application. Until the committee makes a report favorable to the admission of the applicant, he shall not be voted for as a member, unless upon the written application of seven (7) members of the governing committee to the president, made within five (5) days after the committee's report has been presented; in which case the governing committee may, by a two-thirds vote, reverse the report of the committee, and such reversal shall have the same effect as if the committee's report had originally been favorable. If a report be favorable, the name of the candidate shall be posted in the stock exchange, and notice given that a ballot will be taken at the next stated meeting of the governing committee in order that every member of the exchange may have an opportunity of objecting to the candidate's election; such objection shall be in writing to the president of the governing committee.

The election of candidates for membership shall be held by the governing committee, but no election shall be valid unless at least eighteen (18) ballots be cast; and, if five (5) ballots be cast against a candidate, he shall be declared not elected.

Article 11.

SEC. 1. The number of members shall be limited to two hundred and thirty (230).

SEC. 4. Any member wishing to sell his membership shall have the right to do so, provided he has no unsettled contracts with or claim against him by any member of the stock exchange, for transactions arising in or relating to the business of banker or a stock or exchange broker; but, where the arbitration committee shall determine that any claims or contracts exist, the governing committee may, except in cases of insolvency, refuse to permit the membership to be sold, until such claims or contracts are, in its opinion, satisfactorily settled.

The proceeds of the membership, if sold, shall, after deducting all charges due to the exchange to be determined, in cases of controversy, by the arbitration committee—belong to its owner's
7 creditors in the exchange, in proportion to the amount of their respective claims, determined by the arbitration committee, as hereinbefore provided in section 5, article V, and be paid accordingly; and the remainder, if any, shall be paid to the owner.

SEC. 5. When a member dies, his membership shall, within one year thereafter, be sold or transferred; if, however, he be indebted to any member of the stock exchange, then, on the written request of two-thirds of the creditors in interest, said membership shall be sold, at the discretion of the committee on admissions, and the proceeds thereof, after deducting all charges due to the exchange, to be determined in case of controversy by the arbitration committee, shall be paid to its owner's creditors who are members of the exchange, in proportion to the amount of their respective claims, determined as hereinbefore provided in section 5, article V, as to disputes between living members; and the remainder, if any, shall be paid to the legal representatives of the deceased.

The membership of a deceased member shall be liable for all dues and assessments which may be made by the exchange from the day of his death until such time as his membership is transferred.

SEC. 8. Membership in the exchange shall, *ipso facto*, terminate in either of the following cases:

1. Fraud in any transaction arising out of the member's business as a banker or broker.

2. Conviction, by a jury, of any infamous offense or felony. And the commission of the offense shall be ascertained in each case, after notice and opportunity for hearing, by a vote of two-thirds present (being a majority of the whole number) of the governing committee.

3. Suspension from the stock exchange for any cause, and inability for one year thereafter to comply with the constitution, by-laws and rules as to eligibility for reinstatement.

SEC. 9. Upon such termination of membership, the said membership shall be sold, at the discretion of the governing committee, and the proceeds, after deducting all charges due the exchange and all debts due to creditors in the exchange—which amounts shall be de-

termined by the arbitration committee—shall be paid to the expelled member, his heirs or assigns.

Article 12.

SEC. 6. Any member who shall be declared a bankrupt shall, *ipso facto*, be suspended from the stock exchange; but a suspended member, presenting a certificate of discharge under the United States bankrupt law, becomes eligible under the rules for reinstating suspended members.

SEC. 7. If any suspended member fails to settle with all
8 his creditors within six months from the time of his suspension, his membership may be disposed of by the committee on admissions, and must be sold at the end of twelve months; and the proceeds, after deducting all charges due to the exchange to be determined, in cases of controversy, by the arbitration committee—shall belong and be paid to his creditors in the exchange in accordance with section 3.

SEC. 11. The proceeds arising from the sale of the membership of an insolvent shall be divided *pro rata* by the arbitration committee among the creditors recorded, as in section 3, and if any balance remain it shall be paid over to the insolvent.

The by-laws contain no provision relating to membership or transfer of membership.

But notwithstanding the articles of the constitution, *supra*, and the evidence of the bankrupt, it is contended for the bankrupt that his seat in the stock exchange is not property which passes to the trustee for the benefit of his creditors, and cannot be treated as a portion of his assets.

This contention is opposed to the weight of authority and cannot be sustained.

In re Ketchum, I Fed. Rep., 840, is a case in which an application was made for an order requiring the bankrupt to make a transfer of his seat in the New York stock exchange to the assignee in bankruptcy or to such person as the assignee may procure as a purchaser of the seat, and it was held that a seat in the New York exchange is property which passes to an assignee in bankruptcy, and that the court would require the bankrupt to make transfer of the same.

In re Warder, 10 Fed. Rep., 275, is an application for a rule on the bankrupt requiring him to transfer his membership in the New York produce exchange to his assignee in bankruptcy, and Judge Nixon, following the decision of the Supreme Court in Hyde *vs.* Woods, 94 U.S., 523, and the decision of Judge Choate *In re* Ketchum, *supra*, entered an order directing the transfer to be made. This case was appealed to the circuit court and is reported *sub. nom. In re* Werder, 15 Fed. Rep., 789, in which Judge McKennan, speaking of the question whether the bankrupt's membership in the New York produce exchange is an asset available to his creditors through his assignee, or not, says:

"I regard the question as conclusively settled by the opinion of

the Supreme Court in Hyde *vs.* Woods, 94 U. S., 523. Mr. Justice Miller, speaking for the court, there says:

"There can be no doubt that the incorporeal right which Fenn had to this seat when he became bankrupt was property, and the sum realized by the assignee from its sale was valuable property. Nor do we think there can be any reason to doubt that, if he had made no such assignment, it would have passed subject to the rules of the stock board, to his assignee in bankruptcy, and that, if
9 there has been left in the hands of the defendants any balance, after paying the debts due to the members of the board, that balance might have been recovered by the assignee."

In Sparhawk *vs.* Yerkes, 142 U. S., 12, Mr. Chief Justice Fuller says:

"In Hyde *v.* Woods, 94 U. S., 523, it was ruled that the ownership of a seat in a stock and exchange board is property, not absolute and unqualified, but limited and restricted by the rules of the association; that such rules in imposing the condition upon the disposition of memberships that the proceeds should be first applied to the benefit of creditors members are not open to objection on the ground of public policy, or because in violation of the bankrupt act; and that in the case of the bankruptcy of a member his right to a seat would pass to his assignees, and the balance of the proceeds upon sale could be recovered for the benefit of the estate. While the property is peculiar and in its nature a personal privilege, yet such value as it may possess, notwithstanding the restrictions to which it is subject, is susceptible of being realized by creditors. Ager *v.* Murray, 105 U. S., 126; Stephens *v.* Cady, 14 How., 528; Powell *v.* Waldron, 89 N. Y., 328; Belton *v.* Hatch, 109 N. Y., 593; Habenicht *v.* Lissak, 78 California, 351; Weaver *v.* Fisher, 110 Illinois, 146."

These cases rule the matter and establish that the seat or membership of the bankrupt is property, which passes to the trustee, subject to the rules of the exchange. The trustee is vested by operation of law with the title of the bankrupt to this property, the same being under section 70 (5), "property which prior to the filing of the petition he could by any means have transferred," and it is his duty to sell the same for the benefit of the creditors.

And now, March 27, 1900, it it ordered that the trustee sell at public auction the seat or membership of Edward D. Page, the bankrupt, and all his right and interest therein, subject to the constitution and by-laws of the Philadelphia stock exchange regulating membership therein.

Dated at Philadelphia this 27th day of March, 1900.

ALFRED DRIVER,
Referee in Bankruptcy.

Endorsed: No. 348. In bankruptcy. D. C. U. S., E. D. of Pa. In the matter of Edwin D. Page, bankrupt. Certificate by referee to judge. Filed May 15, 1900, at 10.30 a. m. Alfred Driver, referee in bankruptcy. Received from referee and filed May 15, 1900. Charles S. Lincoln, clerk district court.

10 "EXHIBIT B."

United States District Court, Eastern District of Pennsylvania. In Bankruptcy.

In the Matter of EDWARD D. PAGE, Bankrupt. No. 348.

Certificate by Referee.

MCPHERSON, *J.:*

The question certified by the referee for the opinion of the court is, whether a seat or membership in the Philadelphia stock exchange is property that passes to a trustee in bankruptcy, and may be sold by him as an asset of the estate.

Since the decision in Hyde *vs.* Woods, 94 U. S., 523, and Sparhaws *vs.* Yerkes, 142 U. S., 12, I regard the question as no longer open for discussion in the Federal courts. In the former case, it is said upon page 524, "There can be no doubt that the incorporeal right which Fenn had to this seat when he became bankrupt was property, and the sum realized by the assignee from its sale proves that it was valuable property. Nor do we think there can be any reason to doubt that, if he had made no such assignment, it would have passed, subject to the rules of the stock board, to his assignee in bankruptcy, and that if there had been left in the hands of the defendants any balance after paying the debts due to the members of the board, that balance might have been recovered by the assignee."

In the latter case, Hyde *vs.* Woods, is referred to with approval in the following language: "In Hyde *vs.* Woods, 94 U. S., 523, it was ruled that the ownership of a seat in a stock exchange board is property not absolute and unqualified, but limited and restricted by the rules of the association; that such rules in imposing the conditions upon the disposition of memberships that the proceeds should be first applied to the benefit of creditor members, are not open to objection on the ground of public policy, or because in violation of the bankrupt act, and that in the case of the bankruptcy of a member his right to a seat would pass to his assignees, and the balance of the proceeds upon sale could be recovered for the benefit of the estate. While the property is peculiar and in its nature a personal privilege, yet such value as it may possess, notwithstanding the restrictions to which it is subject is susceptible of being realized by creditors." In Sparhawk *vs.* Yerkes, the court was determining a controversy concerning a seat in the Philadelphia stock exchange,
and had before it, therefore, those provisions of the constitu-
11 tion of the exchange, that are now relied upon to support the
proposition, that such a seat is a personal privilege merely, and not in any sense or degree a species of property. In view of these authoritative declarations of the supreme court, it would be superfluous to discuss the provisions just referred to.

The action of the learned referee is approved, and the trustee is directed to carry out the order of sale.

Endorsed: Cause No. 348. U. S. district court, eastern district of Penna. In bankruptcy. In the matter of Edward D. Page, bankrupt. Opinion of court approving the action of the referee in ordering sale of seat in Philadelphia stock exchange and directing the trustee to carry out the order of sale. Filed June 19, 1900. Charles S. Lincoln, clerk district court.

UNITED STATES OF AMERICA, }
Eastern District of Pennsylvania, } *ss*:

It is hereby certified that the foregoing papers marked "Exhibit A" and "Exhibit B" are true copies of the originals, viz:

The certificate by the referee to the judge of the district court in bankruptcy of the question presented on the referee's order of sale by the trustee of the seat of the bankrupt in the Philadelphia stock exchange, and the

Opinion of the court approving the action of the referee and directing the trustee to carry out the order of sale, as the same now remain among the records of the district court of the United States for the eastern district of Pennsylvania in the matter of Edward D. Page, bankrupt, in bankruptcy cause No. 348.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said district court this 28th day of June, A. D. 1900.

CHARLES S. LINCOLN,
[SEAL.] *Clerk District Court United States,*
Eastern District of Pennsylvania.

Endorsed: United States circuit court of appeals, third circuit. In the matter of Edward D. Page, bankrupt. Petition of Edward D. Page for review of proceedings of the district court of United States for eastern district of Pennsylvania. Filed June 28, 1900. Wm. H. Merrick, clerk. George W. Jacobs, Jr., attorney for petitioner.

12 And afterwards to wit; on the twenty-first day of September, A. D. 1900, this cause being called for argument on the transcript of record from the district court of the United States for the eastern district of Pennsylvania, before Hon. George M. Dallas, and Hon. George Gray, circuit judges and Hon. Edward G. Bradford, district judge, and being argued by counsel for the respective parties and the court not being fully advised in the premises takes further time for consideration thereof.

And afterwards to wit; on the twenty-second day of March A. D. 1901, comes the parties aforesaid by their counsel aforesaid, and the court now being fully advised in the premises renders the following opinion, to wit:

13 In the United States Circuit Court of Appeals for the Third Circuit, September Term, 1900.

In the Matter of EDWARD D. PAGE, Bankrupt. No. 14.

Before Dallas and Gray, circuit judges, and Bradford, district judge.

BRADFORD, *District Judge:*

The question before us for decision arises on a petition for a review of certain proceedings in bankruptcy in the district court for the eastern district of Pennsylvania. Edward D. Page, was adjudicated by that court a voluntary bankrupt November 16, 1899, being at the time a member of the Philadelphia stock exchange, an unincorporated society. He became such member in 1880, paying for his seat or membership about $5,500. It is now valued at $8,000. His membership or seat was not included as an asset in the schedules attached to his petition in bankruptcy. The trustee in bankruptcy, however, caused the seat to be appraised and on his petition the referee ordered that the same be sold at public auction subject to the constitution and by-laws of the exchange regulating membership therein. The district court upon review approved the order made by the referee and directed the trustee to proceed with the sale. The case is now before us on the petition of the bankrupt, and the precise point for determination is whether or not title to the membership or seat vested in the trustee. Section 70 of the bankruptcy act of 1898 provides, among other things, that, subject to a certain proviso and exceptions not material to the present inquiry, the trustee of the estate of a bankrupt shall upon his appointment and qualification be vested by operation of law with the title of the bankrupt, as of the date of the adjudication, to all "property which prior to
14 the filing of the petition he could by any means have transferred." The provisions of the constitution of the exchange relating to membership and its transfer are as follows:

"Article 5.

SEC. 4. A committee on admissions, consisting of five members, to which all applications for membership, transfer of membership and readmissions of suspended members shall be referred. It shall be its duty to inquire into the general standing of the applicant, and make a report thereon to the governing committee within one month of the presentation of the application. Until the committee make a report favorable to the admission of the applicant, he shall not be voted for as a member, unless upon the written application of seven (7) members of the governing committee to the president, made within five (5) days after the committee's report has been presented; in which case the governing committee may, by a two-thirds vote, reverse the report of the committee, and such reversal shall have the same effect as if the committee's report had originally been favorable. If a report be favorable, the name of the candidate shall be posted in the stock exchange, and notice given that a ballot will be taken at the next stated meeting of the governing committee

in order that every member of the exchange may have an opportunity of objecting to the candidate's election; such objection shall be in writing to the president of the governing committee. The election of candidates for membership shall be held by the governing committee, but no election shall be valid unless at least eighteen (18) ballots be cast; and if five (5) ballots be cast against a candidate he shall be declared not elected.

Article 11.

SEC. 1. The number of members shall be limited to two hundred and thirty (230).

SEC. 4. Any member wishing to sell his membership shall have the right to do so, provided he has no unsettled contracts with or claim against him by any member of the stock exchange, for transactions arising in or relating to the business of banker or a stock or exchange broker; but, where the arbitration committee shall determine that any claims or contracts exist, the governing committee may, except in cases of insolvency, refuse to permit the membership to be sold, until such claims or contracts are, in its opinion, satisfactorily settled. The proceeds of the membership, if sold, shall, after deducting all charges due to the exchange to be determined, in cases of controversy, by the arbitration committee, belong to its owner's creditors in the exchange, in proportion to the amount of their respective claims, determined by the arbitration committee, as hereinbefore provided in section 5, article V, and be paid accordingly; and the remainder, if any, shall be paid to the owner.

SEC. 5. When a member dies, his membership shall, within one year thereafter, be sold or transferred; if, however, he is indebted to any member of the stock exchange, then, on the written request of two-thirds of the creditors in interest, said membership shall be sold, at the discretion of the committee on admissions, and the proceeds thereof, after deducting all charges due to the exchange, to be determined in case of controversy by the arbitration committee, shall be paid to its owner's creditors who are members of the exchange, in proportion to the amount of their respective claims, determined as hereinbefore provided in section 5, article V, as to disputes between living members; and the remainder, if any, shall be paid to the legal representatives of the deceased. The membership of a deceased member shall be liable for all dues and assessments which may be made by the exchange from the day of his death until such time as his membership is transferred.

SEC. 8. Membership in the exchange shall, *ipso facto*, terminate in either of the following cases:

1. Fraud in any transaction arising out of the member's business as a banker or broker.

2. Conviction, by a jury, of any infamous offense or felony. And the commission of the offense shall be ascertained in each case, after notice and opportunity for hearing, by a vote of two-thirds present (being a majority of the whole number) of the governing committee.

3. Suspension from the stock exchange for any cause, and inabil-

ity for one year thereafter to comply with the constitution, by-laws and rules as to eligibility for reinstatement.

SEC. 9. Upon such termination of membership, the said membership shall be sold, at the discretion of the governing committee, and the proceeds, after deducting all charges due the exchange and all debts due to creditors in the exchange—which amounts shall be determined by the arbitration committee—shall be paid to the expelled member, his heirs or assigns.

Article 12.

SEC. 6. Any member who shall be declared a bankrupt shall, *ipso facto*, be suspended from the stock exchange; but a suspended member, presenting a certificate of discharge under the United States bankrupt law, becomes eligible under the rules for reinstating suspended members.

SEC. 7. If any suspended member fails to settle with all his creditors within six months from the time of his suspension, his membership may be disposed of by the committee on admissions, and must be sold at the end of twelve months; and the proceeds, after deducting all charges due to the exchange to be determined, in cases of controversy, by the arbitration committee, shall belong and be paid to his creditors in the exchange in accordance with section 3.

SECTION 11. The proceeds arising from the sale of the membership of an insolvent shall be divided *pro rata* by the arbitration committee among the creditors recorded, as in section 3, and if any balance remain it shall be paid over to the insolvent."

The by-laws do not contain any provision relating to membership or its transfer. The cases principally relied on by the bankrupt, in support of his contention that title to the seat or membership did not pass to the trustee, relate to the Philadelphia stock exchange, and are Thompson *v.* Adams, 93 Pa. St. 55, and Pancoast *v.* Gowen, 93 Pa. St. 66. The court, in the former case, said that "the seat is not property in the eye of the law, it could not be seized in execution for the debts of the members" and, in the latter, that "a seat in the board of brokers is not property subject to execution in any form." In Thompson *v.* Adams it appears that Richards
16 took the legal title to a seat or membership in the exchange, Thompson furnishing to him the purchase-money. Richards died indebted to sundry members of the exchange in amounts exceeding in the aggregate such purchase-money, and was at the time of his death the only known owner, legal or equitable, of the seat. Nor had his creditors in the exchange any knowledge or notice that his seat had been paid for with the money of another. Pursuant to the provisions of the constitution the seat was sold by the secretary for a sum less than Richards' indebtedness to the members of the exchange, and the point to be determined was whether Thompson was entitled as against such creditors to the whole or any portion of the proceeds of sale. It was held that he was not; the constitution providing that when a member died his seat might be sold by

the secretary and that the balance of the proceeds after satisfying the claims of the members of the board should be paid to his legal representatives. In Pancoast *v.* Gowen an attachment execution was issued on a judgment obtained by Pancoast against Houston and was served upon the members of the Philadelphia stock exchange as garnishees, who admitted that the defendant owned a seat in the exchange but averred that "at the service of this writ they held no property of any kind, attachable at the suit of the plaintiff, belonging to Joseph L. Houston, the seat belonging to him not being property, except between members of the Philadelphia stock exchange." It was held that the seat was not subject to the attachment execution. The points actually determined in these two cases do not support the unqualified dictum contained in one of them that "the seat is not property in the eye of the law." In Barclay *v.* Smith, 107 Ill. 349, it was held that a certificate of membership in the board of trade of the city of Chicago was not property liable to be subjected by a creditor's bill to the payment of the debts of the
17 holder. The language of the court certainly went very far. Although the certificate of membership was "regarded in the market as worth $4,000," it was said that it did not come within any definition of property, and was not property at all, but a "mere privilege conferred upon the member." In Weaver *v.* Fisher, 110 Ill. 146, it was held, however, that a bill in chancery would lie to compel the surrender of a certificate of membership in the Chicago board of trade which had been procured with the complainant's money, but taken in the name of the defendant, who was her agent. The court, among other things, said:

"It is misapprehension to suppose, as counsel for plaintiff in error seem to, that we held in Barclay *v.* Smith, 107 Ill. 349, that there are no property rights of any kind in a certificate of membership in the board of trade of the city of Chicago. We simply there held that such a certificate is not property which is liable to be subjected to the payment of the debts of the holder by legal proceedings. * * * It cannot be said here, that we must from the nature of this corporation, hold there can be no pecuniary value in a certificate of membership, because the proof shows the contrary with absolute certainty. It has a regular pecuniary market value, notwithstanding the conditions to which the transfer of its title is subject."

The material inquiry before us is, not whether the seat could have been attached or taken in execution, but whether it was not property which Page prior to his bankruptcy could have transferred. The bankrupt act vests in the trustee the title not only to the property of the bankrupt which prior to the filing of the petition "might have been levied upon and sold under judicial process against him," but, as has been stated, to property which prior to that time "he could by any means have transferred." The membership or seat of the bankrupt in the exchange certainly was of pecuniary value to him and, subject to the restrictions and limitations of the constitution, could have been transferred by him to another. Section 4 of article 11 provides that "any member wishing to sell his membership shall

have the — to do so, provided he has no unsettled contracts with or claims against him by any member of the stock exchange, for transactions arising in or relating to the business of banker or a stock or exchange broker." It appears that the bankrupt had at the time of the adjudication no such unsettled contracts or
18 claims against him, and that the value of his seat or membership amounted to a substantial sum of money. It is true that the approval of the proper authorities in the exchange was necessary to a valid transfer of the membership, and that, as such approval might or might not be withheld, this requirement might prevent a transfer to a given person. This contingency possibly affected the value of the seat for the purposes of sale, but, while restricting, did not destroy its transferability. The membership was more than a mere privilege. It was property vested in Page and transferable to any person meeting the approval of the exchange. On principle we perceive no reason why the seat of the bankrupt was not embraced in "property which prior to the filing of the petition he could by any means have transferred." We are aware that in the case of *In re* Sutherland, 23 Fed. Cas. 453 (13,647) Judge Blodgett held that under the bankruptcy act of 1867 membership in the Chicago Board of Trade was not an asset which passed to an assignee in bankruptcy. The authorities to the contrary, however, are quite conclusive. Hyde *v.* Woods, 94 U. S. 523. *In re* Ketchum, 1 Fed. 840. *In re* Warder, 10 Fed. 275. *In re* Werder, 15 Fed. 789. Sparhawk *v.* Yerkes, 142 U. S. 1.

The order of the court below under review is affirmed.

Filed March 22, 1901.

19 In the United States Circuit Court of Appeals for the Third Circuit.

EDWARD D. PAGE, Bankrupt, Appellant,
vs.
CHARLES WELSH EDMUNDS, Trustee, Appellee.

Appeal from the district court of the United States for the eastern district of Pennsylvania.

This cause came on to be heard on the transcript of record from the district court of the United States for the eastern district of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the order of the said district court in this cause, be, and the same is hereby affirmed with costs.

GEO. M. DALLAS, *Cir. Judge.*

Philadelphia, March 25. 1901

20 In the Supreme Court of the United States.

EDWARD D. PAGE, Bankrupt, Appellant,
vs.
CHARLES W. EDMUNDS, Trustee, Appellee.

Appeal from the United States circuit court of appeals for the third circuit.

To the honorable the Supreme Court of the United States:

The above-named Edward D. Page, appellant, conceiving himself aggrieved by the decree made and entered on the 22nd day of March, A. D. 1901, by the United States circuit court of appeals in the above-entitled cause, does hereby appeal from the said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is presented herewith.

And your petitioner shows that the said cause is not one in which the jurisdiction of the said circuit court of appeals is dependent entirely or at all upon the fact that the opposite parties to the suit are one of them an alien and the other a citizen of the United States, or one of them a citizen of one State and the other a citizen of a different State, but is dependent on the fact that this is a suit of a civil nature arising under the bankruptcy laws of the United States involving questions, the determination of which is essential to a uniform construction of the bankruptcy act throughout the United States.

That the said order of the circuit court of appeals is final, but the jurisdiction thereof is not final, and your petitioner claims the right to remove the aforesaid judgment of said circuit court of appeals,

21 affirming the order of the district court of the eastern district of Pennsylvania, to this honorable court, for review by appeal under authority of the statutes of the United States (sec. 6 of the act of March 3rd, 1891, chap. 517, 26 Stat. 826; and of the national bankruptcy act of July 1st, 1898, chap. IV, sec. 25–B. 2.)

All of which appears in the record of the proceedings in the said case, which is herewith submitted.

Your petitioner further says that this petition for an appeal is not filed for the purposes of delay, but because he believes that there is manifest error in the proceedings aforesaid.

Wherefore your petitioner prays the allowance of an appeal, returnable into the Supreme Court of the United States, and for a supersedeas.

And he will ever pray, etc.

EDWARD D. PAGE,
By GEORGE W. JACOBS, JR.,
Solicitor for Appellant.

Dated, April 22, 1901.

And now, to wit, Aprid 22d, 1901, it is ordered that an appeal be allowed on giving bond for costs for $509.00.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court.

(Endorsed:) In the Supreme Court of the United States. No. — Term —. Edward D. Page, bankrupt, appellant, *vs.* Charles W. Edmunds, trustee, appellee. Petition for appeal. George W. Jacobs, Jr., solicitor for appellant. Filed April 23, 1901.

22 In the Supreme Court of the United States.

EDWARD D. PAGE, Bankrupt, Appellant,
vs.
CHARLES W. EDMUNDS, Trustee, Appellee.

Assignments of Error.

And now on the 18th day of April, A. D. 1901, came the said Edward D. Page, appellant, by George W. Jacobs, Jr., his solicitor, and says that the decree of the United States circuit court of appeals for the third circuit, in the said cause affirming the order of the court below, directing the said Charles W. Edmunds, trustee of Edward D. Page, bankrupt, to carry out the order of sale of the appellant's membership in the Philadelphia Stock Exchange, is erroneous and against the just rights of the said appellant for the following reasons:

First. Under the laws of the State of Pennsylvania, bankrupt's domicile, established by rulings of the supreme court of the State, membership in the Philadelphia Stock Exchange is mere personal privilege of the member, and in the eye of the law does not constitute property or assets for the payment of debts in any form.

Second. The court erred in not recognizing and following the settled law of Pennsylvania, declaring membership in the Philadelphia Stock Exchange to be exempt from the claims of creditors.

Third. The court erred in directing sale of bankrupt's membership in the Philadelphia Stock Exchange, because such order if effective would deprive him of an exemption prescribed by
23 the State law in force at the time of filing his petition, of the State wherein he had had his domicile for the six months or the greater portion immediately preceding the filing of the petition.

Fourth. The court, referring to the cases Thompson *vs.* Adams, 93 Pa. S. R. 55 and Pancoast *vs.* Gowan, 93 Pa. S. R. 66, erred in its conclusion "the points actually determined in these two cases do not support the unqualified dictum contained in one of them that 'the seat is not property in the eye of the law.'"

Fifth. The court erred in that expression of its opinion "the material inquiry before us is, not whether the seat could have been attached or taken in execution, but whether it was not property which Page prior to his bankruptcy could have transferred. The bankrupt act vests in the trustee the title not only to property of the bankrupt which prior to the filing of the petition 'might have been levied upon and sold under judicial process against him,' but as has been stated, to property which prior to that time 'he could by any means have transferred.'"

Sixth. The court erred in holding that membership in the Phila-

delphia Stock Exchange was tangible property for the payments of debts, as set forth in its opinion—"It is true that the approval of the proper authorities in the exchange was necessary to a valid transfer of the membership, and that as such approval might or might not be withheld; this requirement might prevent a transfer to a given person. This contingency possibly affected the value of the seat for the purposes of sale, but while it is restricting did not destroy its transferability. The membership was more than a mere privilege. It was property vested in Page and transferable to any person meeting the approval of the exchange. On principle we perceive no reason why the seat of the bankrupt was not em-
24 braced in 'property which prior to the filing of the petition he could by any means have transferred.'"

Seventh. The court erred in recognizing with force of conclusive precedence the cases Hyde *vs.* Woods, 94 U. S. R. 523; *In re* Ketchem, 1 Fed. R. 840; *In re* Werder, 15 Fed. R. 789, because all these decisions relate to stock exchanges of States other than Pennsylvania, in which the State courts themselves have held memberships in those exchanges, under the literal construction of their respective charters, constitutions or by-laws, to constitute the property subject to the payment of debts. And the case of Sparhawk *vs.* Yerkes, 142 U. S. R. 1, cited by the court in support of its opinion, though relating to the Philadelphia Stock Exchange, did not embrace propositions of law or fact analogous to the present cause at issue.

Wherefore: the said complainant prays that the said decree be reversed, and that the said court may be directed to enter a decree in accordance with the prayer of this appellant.

GEORGE W. JACOBS, JR.,
Solicitor for Appellant.

[Endorsed:] In the Supreme Court of the United States No. — Term —. Edward D. Page, appellant, *vs.* Charles W. Edmunds, trustee, appellee. Assignments of error. George W. Jacobs, Jr. solicitor for appellant. Filed April 23, 1901.

25 Know all men by these presents, that we, Edward D. Page of the city of Philadelphia in the State of Pennsylvania, as principal, and the United States Fidelity and Guaranty Company, as sureties, are held and firmly bound unto Charles W. Edmunds trustee in the full and just sum of five hundred ($500) dollars, to be paid to the said Charles W. Edmunds trustee certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 19th day of April in the year of our Lord one thousand nine hundred and one (1901).

Whereas, lately at a United States circuit court of appeals for the third circuit in a suit depending in said court, between Edward D. Page, bankrupt, appellant and Charles W. Edmunds, trustee, appellee a decree was rendered against the said Edward D. Page bankrupt, and the said Edward D. Page, bankrupt appellant having ob-

tained transcript of record and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Charles W. Edmunds, trustee appellee citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof.

Now the condition of the above obligation is such, that if the said Edward D. Page bankrupt appellant shall prosecute his appeal to effect and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

EDWARD D. PAGE. [SEAL.]
THE UNITED STATES FIDELITY AND GUARANTY COMPANY,
By HENRY E. HOWELL, [SEAL.]
Resident Vice-President.

Attest: J. WALTER HEBLEY,
Resident Secretary.

Sealed and delivered in presence of
JAMES F. GLEIRZ.
GEO. W. JACOBS, JR.

Approved by
GEO. M. DALLAS,
U. S. Circuit Judge.
GEO. SHIRAS, JR.,
Associate Justice Supreme Court U. S.

4/20/'01.—Surety approved.
CHARLES WELSH EDMUNDS, *Trustee.*

26 UNITED STATES OF AMERICA, *ss:*

To Charles W. Edmunds, trustee, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the United States circuit court of appeals for the third circuit wherein Edward D. Page is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United States, this 22d day of April, in the year of Lord one thousand nine hundred and one.

GEORGE SHIRAS,
Associate Justice of the Supreme Court of the United States.

27 I hereby accept service of the within writ for Charles W. Edmunds trustee and request the clerk to enter my appearance for him.

HENRY R. EDMUNDS,
Att'y for C. W. Edmunds, Trustee.

April 23, 1901.

28 UNITED STATES OF AMERICA, *sct:*

I, William H. Merrick, clerk of the United States circuit court of appeals, for the third circuit, do hereby certify the foregoing pages from one to twenty-seven inclusive to contain a full, true, complete and faithful copy of the original transcript of record in the case wherein Edward D. Page, bankrupt is appellant, and Charles Welsh Edmunds, trustee is appellee, on file, and now remaining among the records of the said court, in my office.

United States Circuit Court of Appeals, Third Circuit.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of the said court, at Philadelphia, this fifteenth day of May in the year of our Lord one thousand nine hundred and one and of the Independence of the United States the one hundred and twenty-fifth.

WM H. MERRICK,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

Endorsed on cover: File No. 18,169. U. S. C. C. of appeals 3rd circuit. Term No. 100. Edward D. Page, bankrupt, appellant, *vs.* Charles W. Edmunds, trustees. Filed May 16th, 1901.